



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2021

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2021-23471

Dear Mr. Falgoust:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 901955 (PIR# C103446).

The City of Austin (the "city") received a request for the name and cause of death of certain individuals who died during a stated time period. You claim the submitted information is excepted from disclosure under section 552.115 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not consist of the name and cause of death of certain individuals. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Section 552.115 excepts from disclosure death records held either by the vital statistics unit of the Texas Department of Health (the "department") or local registration officials. Section 552.115 provides, in relevant part:

¹ We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) A . . . death record maintained by the vital statistics unit of the [department] or a local registration official is excepted from [required public disclosure], except that:

. . .

(2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the vital statistics unit or local registration official, except that if the decedent is unidentified, the death record is public information and available to the public on and after the first anniversary of the date of death;

(3) a . . . general death index established or maintained by the vital statistics unit or a local registration official is public information and available to the public to the extent the index relates to a . . . death record that is public information and available to the public under Subdivision . . . (2); [and]

(4) a . . . summary death index prepared or maintained by the vital statistics unit or a local registration official is public information and available to the public[.]

Gov't Code § 552.115(a)(2)-(4). The responsive information includes the decedents' names. This information relates to individuals whose dates of death are less than 25 years old. However, section 552.115(a)(4) provides summary death indexes are public information excluded from confidentiality under section 552.115(a). *See id.* § 552.115(a)(4). Although the Act does not define "summary death index," the department has issued administrative rules that define this term in section 181.23 of title 25 of the Texas Administrative Code.² Section 181.23 provides, in part:

(c) Death indexes.

. . .

(3) A summary death index maintained or established by the Vital Statistics Unit or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant.

² Generally, a governmental body may not issue a rule that makes confidential information that is otherwise subject to public disclosure under the Act. *See* Open Record Decision Nos. 484 (1987), 392 (1983). However, this office has found that the legislature granted specific authority to the department to issue administrative rules regarding the public availability of information contained in or derived from vital records. *See* Open Records Decision No. 596 (1991).

See 25 T.A.C. § 181.23(c)(3). Thus, section 181.23 prescribes the format of death indexes required to be compiled and maintained by the city's local registration official. We understand the city's local registration official maintains a database that contains the information that would be included in a summary death index, from which such an index could be compiled. The summary death index as prescribed by the above regulations contains the registrant's surname, given name or initials and the date of the event. *Id.* Summary death indexes are declared in subsection (a) of section 552.115 to be "public information and available to the public." *See* Gov't Code § 552.115(a)(4). Thus, pursuant to section 552.115(a)(4), the names of the decedents in the responsive information are not excepted from required public disclosure under section 552.115(a) of the Government Code.

However, we note the responsive information contains information beyond that which would be contained within the summary death index as prescribed by section 181.23. A summary death index does not include the remaining information contained in the responsive information. *See* 25 T.A.C § 181.23(c)(3). We believe the purpose behind section 552.115 of the Government Code, that of preventing fraud, is one of the purposes behind the above-quoted administrative rules that dictate certain categories of information that comprise each type of death index. The remaining category of information in the responsive information is not public information under section 552.115 and the above-referenced administrative rules do not provide for the release of the remaining responsive information. Therefore, the remaining responsive information, which is derived from or related to a source death record, is made confidential under section 552.115(a) of the Government Code. Therefore, the city must withhold the remaining responsive information under section 552.115(a) of the Government Code. The city must release the decedents' names pursuant to section 552.115(a)(4) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)